

Message

From: Kupchan, Simma [Kupchan.Simma@epa.gov]
Sent: 1/19/2021 1:50:50 PM
To: Palmer, Leif [Palmer.Leif@epa.gov]
CC: Wehling, Carrie [Wehling.Carrie@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Wade, Alexis [Wade.Alexis@epa.gov]
Subject: Re: Position on FDEP intervention

Thanks, all. I will see if we can make that work!

Simma

On Jan 19, 2021, at 8:36 AM, Palmer, Leif <Palmer.Leif@epa.gov> wrote:

I recommend the same. Thanks

Sent from my iPhone

On Jan 19, 2021, at 8:35 AM, Wehling, Carrie <Wehling.Carrie@epa.gov> wrote:

Hey Simma,

Ex. 5 AC/AWP

Ex. 5 AC/AWP

Thanks.

Carrie

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Sunday, January 17, 2021 11:54 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>
Subject: Re: Position on FDEP intervention

Ex. 5 AC/AWP

Ex. 5 AC/AWP

Thank you!

Sent from my iPhone

On Jan 17, 2021, at 11:35 PM, Kupchan, Simma
<Kupchan.Simma@epa.gov> wrote:

David,

Ex. 5 AC/AWP

Thanks for your attention!

Simma

Begin forwarded message:

From: "Kupchan, Simma" <Kupchan.Simma@epa.gov>
Date: January 14, 2021 at 4:20:00 PM EST
To: "Palmer, Leif" <Palmer.Leif@epa.gov>, "Ghosh, Mita" <Ghosh.Mita@epa.gov>, "Hicks, Matt" <Hicks.Matthew@epa.gov>, "Nagrani, Kavita" <Nagrani.Kavita@epa.gov>, "Creswell, Michael" <Creswell.Michael@epa.gov>, John Goodin <Goodin.John@epa.gov>, "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Beck, Whitney" <beck.whitney@epa.gov>, "Hurl, Kathy" <Hurl.Kathy@epa.gov>, "Gettle, Jeaneanne" <Gettle.Jeaneanne@epa.gov>, "Thomas McGill" <Mcgill.Thomas@epa.gov>, "Calli, Rosemary" <Calli.Rosemary@epa.gov>, "Laycock, Kelly" <Laycock.Kelly@epa.gov>, "Parker, Christopher" <Parker.Christopher@epa.gov>
Subject: FW: NEW LITIGATION: Center for Biological Diversity et al. v. USEPA et al. (D.D.C. 1:21-cv-00119) (CWA)

All,

Earthjustice, representing the Center for Biological Diversity, Defenders of Wildlife, the Sierra Club, and several Florida-based environmental organizations, has filed a complaint today in the US District Court for the District of Columbia challenging EPA's approval of Florida's assumption of the Clean Water Act (CWA) section 404 program and related underlying actions of

the US Fish and Wildlife Service (USFWS) and the US Army Corps of Engineers (the Corps). The complaint identifies EPA, the USFWS, and the Corps as defendants, as well as individuals in senior leadership positions at these agencies.

The complaint alleges that:

1. EPA's interlocutory determination that Florida's submission was complete violated the CWA and the Administrative Procedure Act (APA);
2. EPA's approval of Florida's assumption violated the CWA and the APA because Florida did not make the necessary showing that it would issue permits that assure compliance with the requirements of Section 404, that the public would have notice and an opportunity for hearing on every permit application; and that Florida would abate violations of any permit and the permit program via civil and criminal enforcement;
3. USFWS' Biological Opinion, No Jeopardy determination, and Incidental Take Statement violated the Endangered Species Act (ESA) and the APA;
4. EPA's "No Effect" determination violated the CWA and the APA;
5. The Corps' retained waters determination violated the Rivers and Harbors Act and the APA;
6. EPA's immediate effective date for Florida's Section 404 program violated the APA; and
7. EPA's failure to codify Florida's program prior to its effective date violated the APA.

I will send a more detailed summary of the complaint soon.

Simma Kupchan
EPA Office of General Counsel
Water Law Office
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202-564-3105

<CBD Complaint.pdf>